

## § 230.425

## 17 CFR Ch. II (4–1–10 Edition)

in paragraph (b) of this section must be filed pursuant to this paragraph as soon as practicable after the discovery of such failure to file.

NOTE TO PARAGRAPH (b)(8) OF RULE 424. A form of prospectus required to be filed pursuant to another paragraph of Rule 424(b) that is filed under Rule 424(b)(8) shall nonetheless be “required to be filed” under such other paragraph.

*Instruction:* Notwithstanding § 230.424 (b)(2) and (b)(5) above, a form of prospectus or prospectus supplement relating to an offering of mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(1)(x) that is required to be filed pursuant to paragraph (b) of this section shall be filed with the Commission no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(c) If a form of prospectus, other than one filed pursuant to paragraph (b)(1) or (b)(4) of this Rule, consists of a prospectus supplement attached to a form of prospectus that (1) previously had been filed or (2) was not required to be filed pursuant to paragraph (b) because it did not contain substantive changes from a prospectus that previously was filed, only the prospectus supplement need be filed under paragraph (b) of this rule, provided that the first page of each prospectus supplement includes a cross reference to the date(s) of the related prospectus and any prospectus supplements thereto that together constitute the prospectus required to be delivered by Section 5(b) of the Securities Act (15 U.S.C. 77e(b)) with respect to the securities currently being offered or sold. The cross reference may be set forth in longhand, provided it is legible.

NOTE: Any prospectus supplement being filed separately that is smaller than a prospectus page should be attached to an 8½” × 11” sheet of paper.

(d) Every prospectus consisting of a radio or television broadcast shall be reduced to writing. Five copies of every such prospectus shall be filed with the Commission in accordance with the requirements of this section.

(e) Each copy of a form of prospectus filed under this rule shall contain in

the upper right corner of the cover page the paragraph of this rule, including the subparagraph if applicable, under which the filing is made, and the file number of the registration statement to which the prospectus relates. The information required by this paragraph may be set forth in longhand, provided it is legible.

(f) This rule shall not apply with respect to prospectuses of an investment company registered under the Investment Company Act of 1940 or a business development company.

(g) A form of prospectus filed pursuant to this section that operates to reflect the payment of filing fees for an offering or offerings pursuant to Rule 456(b) (§ 230.456(b)) must include on its cover page the calculation of registration fee table reflecting the payment of such filing fees for the securities that are the subject of the payment.

[14 FR 202, Jan. 14, 1949, as amended at 16 FR 8736, Aug. 29, 1951; 19 FR 400, Jan. 22, 1954; 19 FR 6728, Oct. 20, 1954; 21 FR 1046, Feb. 15, 1956; 52 FR 21260, June 5, 1987; 53 FR 3878, Feb. 10, 1988; 55 FR 23923, June 13, 1990; 56 FR 30054, July 1, 1991; 57 FR 48975, Oct. 29, 1992; 60 FR 26615, May 17, 1995; 62 FR 39763, July 24, 1997; 70 FR 44812, Aug. 3, 2005]

### **§ 230.425 Filing of certain prospectuses and communications under § 230.135 in connection with business combination transactions.**

(a) All written communications made in reliance on § 230.165 are prospectuses that must be filed with the Commission under this section on the date of first use.

(b) All written communications that contain no more information than that specified in § 230.135 must be filed with the Commission on or before the date of first use except as provided in paragraph (d)(1) of this section. A communication limited to the information specified in § 230.135 will not be deemed an offer in accordance with § 230.135 even though it is filed under this section.

(c) Each prospectus or § 230.135 communication filed under this section must identify the filer, the company that is the subject of the offering and the Commission file number for the related registration statement or, if that file number is unknown, the subject

company's Exchange Act or Investment Company Act file number, in the upper right corner of the cover page.

(d) Notwithstanding paragraph (a) of this section, the following need not be filed under this section:

(1) Any written communication that is limited to the information specified in § 230.135 and does not contain new or different information from that which was previously publicly disclosed and filed under this section.

(2) Any research report used in reliance on § 230.137, § 230.138 and § 230.139;

(3) Any confirmation described in § 240.10b-10 of this chapter; and

(4) Any prospectus filed under § 230.424.

NOTES TO § 230.425: 1. File five copies of the prospectus or § 230.135 communication if paper filing is permitted.

2. No filing is required under § 240.13e-4(c), § 240.14a-12(b), § 240.14d-2(b), or § 240.14d-9(a), if the communication is filed under this section. Communications filed under this section also are deemed filed under the other applicable sections.

[64 FR 61450, Nov. 10, 1999]

**§ 230.426 Filing of certain prospectuses under § 230.167 in connection with certain offerings of asset-backed securities.**

(a) All written communications made in reliance on § 230.167 are prospectuses that must be filed with the Commission in accordance with paragraphs (b) and (c) of this section on Form 8-K (§ 249.308 of this chapter) and incorporated by reference to the related registration statement for the offering of asset-backed securities. Each prospectus filed under this section must identify the Commission file number of the related registration statement on the cover page of the related Form 8-K in addition to any other information required by that form. The information contained in any such prospectus shall be deemed to be a part of the registration statement as of the earlier of the time of filing of such information or the time of the filing of the final prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) relating to such offering pursuant to § 230.424(b).

(b) Except as specified in paragraph (c) of this section, *ABS informational and computational material* made in reli-

ance on § 230.167 that meet the conditions in paragraph (b)(1) of this section must be filed within the time frame specified in paragraph (b)(2) of this section.

(1) *Conditions for which materials must be filed.* The materials are provided to prospective investors under the following conditions:

(i) If a prospective investor has indicated to the issuer or an underwriter that it will purchase all or a portion of the class of asset-backed securities to which such materials relate, all materials relating to such class that are or have been provided to such prospective investor; and

(ii) For any other prospective investor, all materials provided to such prospective investor after the final terms have been established for all classes of the offering.

(2) *Time frame to file the materials.* The materials must be filed by the later of:

(i) The due date for filing the final prospectus relating to such offering that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) pursuant to § 230.424(b); or

(ii) Two business days after first use.

(c) Notwithstanding paragraphs (a) and (b) of this section, the following need not be filed under this section:

(1) *ABS informational and computational material* that relate to abandoned structures or that are furnished to a prospective investor prior to the time the final terms have been established for all classes of the offering where such prospective investor has not indicated to the issuer or an underwriter its intention to purchase the asset-backed securities.

(2) Any *ABS informational and computational material* if a prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) relating to the offering of such asset-backed securities accompanies or precedes the use of such material.

(3) Any *ABS informational and computational material* that does not contain new or different information from that which was previously disclosed and filed under this section.

(4) Any written communication that is limited to the information specified in § 230.134, 230.135 or 230.135c.